

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
KAZH License, LLC)	
)	CSR-6225-M
v.)	
)	
Cox Communications)	
)	
Request for Carriage of KAZH-TV)	
(Channel 57), Baytown, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 2003

Released: December 24, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KAZH License, LLC (“KAZH License”), licensee of television broadcast station KAZH-TV, Baytown, Texas (“KAZH”), filed the above-captioned must carry complaint pursuant to Sections 76.7 and 76.61(3) of the Commission’s rules, asserting mandatory rights for KAZH on Cox Communications’ (“Cox”) cable systems serving Huntsville, Corrigan and Livingston, Texas (“Cable Communities”).¹ KAZH License requests that the Commission order Cox to commence carriage of KAZH on the three cable systems in question.² Cox filed an opposition to which KAZH replied.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended (“Communications Act”), and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, (“*Must Carry Order*”), commercial television broadcast stations, such as KAZH, are entitled to assert mandatory carriage rights on cable systems located within the station’s market.³ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁴ The term DMA is a

¹ Complaint at 1.

² *Id.*

³ 8 FCC Rcd 2965, 2976-2977 (1993).

⁴ Section 614(h)(1)(C) of the Communications Act, amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications that delineate television markets based on viewing patterns. *See* 47 U.S.C. § (continued...)

geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁵ One method of doing so is for the cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to the cable system's principal headend.⁶ For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45 dBm.⁷ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁸

III. DISCUSSION

4. In support of its complaint, KAZH states that it is a full power commercial station operating on channel 57, and licensed to Baytown, Texas, which is in the Houston, Texas DMA.⁹ It states further that the three Cox cable television systems at issue are also located in the Houston, Texas DMA.¹⁰ KAZH contends that because it is located within the same DMA as the Cox cable systems serving Huntsville, Corrigan and Livingston, Texas, it is entitled to must carry status on those three cable systems.¹¹ KAZH states that on September 25, 2002 it notified Cox of its must carry election for the election cycle beginning January 1, 2003. KAZH states further that on May 1, 2002, because Cox did not begin to carry the Station on January 1, 2002, it demanded mandatory carriage on the three cable systems at issue.¹² According to KAZH, Cox denied the Station's May 1, 2003 demand for mandatory carriage alleging that KAZH's signal did not meet the Commission's signal strength requirements.¹³ According to KAZH, it is committed to acquire, at its own expense, the necessary equipment to improve its signal and provide the three Cox cable systems at issue with a good quality signal.¹⁴

5. Cox maintains that there is no dispute with KAZH regarding its carriage on the three

(...continued from previous page)

534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast station's market be defined by Nielsen Media Research's DMAs. *See* 47 C.F.R. § 76.55(3).

⁵ *See Must Carry Order*, 8 FCC Rcd at 2991.

⁶ 47 C.F.R. § 76.55(c)(3).

⁷ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁸ *Must Carry Order*, 8 FCC Rcd at 2991.

⁹ Complaint at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* and Exhibit C.

¹⁴ *Id.* at 3.

systems at issue.¹⁵ Cox asserts that KAZH does not qualify for mandatory carriage on its cable systems at issue because KAZH fails to deliver a good quality signal to the applicable headends.¹⁶ According to Cox, it has conducted signal strength tests that support its assertion that KAZH's signal is deficient.¹⁷ Cox submitted May 2003 signal strength tests results, which showed readings between -48.95 dBm and -53.65 dBm for the Huntsville headend; -41.55 dBm and -56.85 dBm for the Livingston headend; and -87.75 dBm and 98.05 dBm for the Corrigan headend.¹⁸ Cox also states that September 10, 2003 testing revealed readings of -46.45 dBm, -40.95 dBm, -41.85 dBm, -40.15 dBm and -38.55 dBm for the Livingston headend; -43.65 dBm, -41.95 dBm, -51.65 dBm, -34.95 dBm and -48.85 dBm for the Huntsville headend; and -86.45 dBm, -88.45 dBm, -84.35 dBm, -93.45 dBm and -80.75 dBm for the Corrigan headend, confirm that KAZH does not deliver a good quality signal to the three principal headends at issue.¹⁹ Cox contends that because KAZH does not provide a good signal quality to the Huntsville, Livingston and Corrigan headends, it does not qualify as a local station for mandatory carriage purposes and thus, the Commission should dismiss KAZH's complaint.²⁰ Cox also argues that KAZH's complaint is procedurally defective because it failed to include an affidavit or a declaration as required by Section 76.6(a)(3) of the Commission's rules.²¹ Cox also contends that the instant Complaint is also deficient because it did not include "relevant documentation," such as the May 2003 test results Cox provided, to support the Station's factual allegations.²² Cox argues that even if the Complaint is properly supported, it should be dismissed because KAZH fails to deliver a good quality signal to the three Cox principal headends in question.²³ In addition, Cox argues that the Complaint is procedurally defective because KAZH failed to serve a copy of its Complaint to the local franchising authorities and to Cox or its representatives.²⁴

6. In reply, KAZH reiterates its arguments that it qualifies as a local station and that as such, it has mandatory carriage rights on the three Cox cable systems in question because they are in the same DMA as the Station.²⁵ In this regard, it restates its commitment to acquire, at its own expense, all the necessary equipment to provide the applicable Cox's principal headends with a good quality signal, noting that Commission precedent permits a station to cure an inadequate signal if it, at its own expense,

¹⁵ Opposition at 1.

¹⁶ *Id.* 2 and Exhibit 1.

¹⁷ *Id.* at 6 and Exhibits 1 and 5.

¹⁸ *Id.* at Exhibit 1.

¹⁹ *Id.* at Exhibit 5.

²⁰ *Id.* at 4.

²¹ KAZH's Complaint has a "Verification" declaring the information therein as "true and correct." See Complaint at 5.

²² Opposition at 5. In this regard, we note that the Complaint sets forth KAZH's case; Cox was free to rebut KAZH's case, as it did here, by introducing the May 2003 test results.

²³ Opposition at 6-7.

²⁴ Although KAZH failed to serve the franchising authorities, we note that it cured this deficiency when it mailed a copy of the Complaint along with its Reply. As far as serving Cox is concerned, on Exhibit A of its Reply, a legal secretary of the law offices representing KAZH declares that she caused a copy of the Complaint to be sent to Mr. Anthony Lee, Director of Programming, Middle America Cox.

²⁵ Reply at 2.

provides a good quality signal to a cable system's principal headend.²⁶

7. Concerning Cox's allegations that the Complaint is procedurally defective because it did not include an affidavit or declaration and because KAZH failed to serve the Complaint on Cox or the franchising authorities, we note that the issue has been resolved by subsequent filings with the Commission in this proceeding. We note that KAZH's Complaint did include a "Verification" certifying the Complaint to be "true and correct." Also, Cox, as noted in KAZH's Reply, was served with a copy of the Complaint. A review of the signal strength tests presented indicates that the results for the Livingston and Huntsville systems are inconclusive as some of the results are above and some below the required levels for UHF television stations. We need not address this issue since Petitioner has agreed to provide Cox with the necessary equipment to deliver a good quality signal to these two headends. As to the Corrigan headend, the test results show that, presently, KAZH does not deliver a good quality signal to that headend. KAZH has also agreed to provide specialized equipment needed to deliver a good quality signal to this headend as well. Pursuant to the Commission's rules, a broadcast station can cure a deficient signal if the station, at its own expense, provides the cable operator with the specialized equipment needed to improve the station's signal to an acceptable quality.²⁷ We find that KAZH, by agreeing to pay for the cost of delivering a good quality signal the Cox's Livingston, Huntsville and Corrigan headends is entitled to carriage. Thus, we grant KAZH's Complaint conditioned upon KAZH delivering a good quality signal to Cox's Livingston, Huntsville and Corrigan principal headends.

IV. ORDERING CLAUSES

8. Accordingly **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the complaint filed by KAZH License, LLC **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that Cox **SHALL COMMENCE CARRIAGE** of television station KAZH-TV on its cable systems serving Livingston, Huntsville and Corrigan, Texas, within 60 days from the date that station KAZH delivers a good quality signal to those headends.

10. **IT IS FURTHER ORDERED** that KAZH shall notify Cox, in writing, of its channel position election on the Livingston, Huntsville and Corrigan, Texas cable systems within thirty (30) days of the date it provides a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.²⁸ This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁹

FEDERAL COMMUNICATIONS COMMISSION

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²⁶ *Id.* at 3-4.

²⁷ *Must Carry Order*, 8 FCC Rcd at 2991; *see also* 47 U.S.C. § 534(h)(1)(B)(iii).

²⁸ 47 C.F.R. §§ 76.57 and 76.64(f).

²⁹ 47 C.F.R. § 0.283.